

CHAPTER 12  
PROBATION REVOCATION IN THE SIXTH JUDICIAL DISTRICT ONLY

**205—12.1(906) Voluntary termination of probation.** Any voluntary termination of probation should be executed in writing by the probationer and approved by the probation officer. Upon the execution of the voluntary termination of probation, the probationer's probation is terminated and the probationer shall be committed to the Iowa Medical and Classification Center at Oakdale as soon as reasonably possible. The probation officer shall determine if the probationer shall be incarcerated prior to the probationer's commitment to the Iowa Medical and Classification Center and shall make arrangements accordingly.

**205—12.2(906) Prerevocation procedures.** Reserved.

**205—12.3(908) Revocation initiated.** Probation revocation procedures shall be initiated only as provided by Iowa Code chapter 908, which this rule is intended to implement.

**205—12.4(908) Revocation of probation.** The board of parole's parole and probation judges for good cause shown may revoke any probation previously granted. Good cause for revocation of probation shall include the violation of a condition or conditions of the probation agreement, or probation plan.

**205—12.5(908) Probation violations.**

**12.5(1)** The probation officer shall report to the board any probationer who is reasonably believed to have engaged in the following kinds of behavior:

- a.* Violation of any federal or state laws, except simple misdemeanors.
- b.* Any violent or assaultive conduct.
- c.* Possession, control or use of any firearms, imitation firearms, explosives or weapons as defined in federal or state statutes.
- d.* Sale, possession, continual or problem use, transportation or distribution of any narcotic or other controlled substance or excessive use of alcohol by the probationer.
- e.* A probationer whose whereabouts are unknown and who has been unavailable for contact for 30 days, or reliable information has been received indicating that the probationer is taking flight or absconding.
- f.* Any behavior indicating the probationer may be suffering from a mental disorder which impairs the probationer's ability to maintain the probation in the community or which makes the probationer a danger to the probationer or others when the mental disorder cannot be adequately treated while in the community.
- g.* Any other conduct or pattern of conduct in violation of the conditions of probation deemed sufficiently serious by the probation officer.

**12.5(2)** The probation officer or supervisor is authorized to dispose of any other probationer misconduct not required to be reported above.

**205—12.6(908) Probation violation report.** The probation violation report is a document prepared by the probation officer on a form or media provided by the board specifying the probation violation charges against a probationer and containing or referring to information known to the probation officer relevant to the charges.

**12.6(1) *Supplemental probation violation report.*** A supplemental probation violation report may be submitted to report sufficient new information or evidence which proves or disproves violations previously charged; note court action on charges which are being prosecuted in a criminal proceeding or expand, clarify, or correct information in an earlier report; provide the board with information not related to the violation but which may affect the board's decision regarding the appropriate disposition; and provide additional requested information to the board at any time or change the officer's recommendation. A supplemental report shall be filed upon the apprehension of a probationer on absconder status.

**12.6(2) *Recommendations.*** The probation officer shall recommend the appropriate disposition necessary to deal with the alleged violation. In a probation violation report, the probation agent may make the following recommendations:

*a. Continue on probation.* This recommendation may be used when a violation charge is not serious enough to warrant incarceration. A copy of the violation report containing a "continue on probation" recommendation shall be personally delivered and explained to the probationer, by the probation officer, and the probationer shall be given an opportunity to admit the alleged violations. Admitted violations contained in the report may be used to adjust time calculations in a later revocation proceeding. In the event that a dispute arises as to alleged violations, the probationer may request a probation hearing. The senior administrative parole and probation judge shall review the violation report and enter an order either affirming the recommendation to continue on probation or schedule the matter for the probation revocation hearing before another administrative parole and probation judge.

A probationer shall be allowed only two violation reports containing a "continue on probation" recommendation in a 12-month period; then a probation revocation hearing must be scheduled.

Generally, violations occurring over 12 months prior to the request for a probation revocation hearing will not be used to adjust time calculations, except in absconder cases and related matters.

*b. Schedule for revocation proceedings.* This recommendation may be used whenever the violation(s) alleged is so serious that incarceration is necessary.

*c. Delay action.* This recommendation is used when there is a lack of information at the time the report is submitted or because charges are still pending and final disposition is unknown, or the whereabouts of the probationer are unknown. The probation officer shall notify the board of the reason(s) for the recommendation to delay action.

*d. Issue a detainer.* This recommendation is used to request that an Iowa detainer be placed against an Iowa probationer who is serving time in another jurisdiction for an offense committed while on probation which would constitute a felony or aggravated misdemeanor if committed in Iowa.

*e. Continue on probation and impose special condition 209A of the parole agreement, participation in the violator's program.* This recommendation may be used when there have been violations of probation, but treatment at the violator's program is seen as a reasonable alternative to revocation of probation.

**12.6(3) *District review.***

*a. Probation officer's responsibility.* After discovery of information indicating a possible violation of probation, and determination by the probation officer that the violation(s) must be reported to the board, the probation officer shall prepare a probation violation report.

*b. Probation supervisor review.* After the preparation of a probation violation report the supervisor shall review the report, shall concur with the recommendation made, and shall submit the report to the business office of the parole board for review and scheduling of a probation revocation hearing, if required.

**12.6(4) *Procedure in lieu of arrest.*** A probation officer may issue a summons/citation for a probation violation hearing. If a summons/citation is issued, the probation officer shall indicate the date, time, and place of the probation hearing on the summons/citation. The probation officer shall contact the board of parole as soon as possible upon the issuance of a summons/citation. The probation revocation hearing conducted pursuant to a summons/citation shall be conducted according to Chapter 12 of the board of parole's administrative rules.

**205—12.7(908) Probation revocation hearing.** Following receipt of a probation officer's request for a probation revocation hearing, the administrative parole and probation judge or the board's designated officer shall set the date, time and place of the probation revocation hearing and shall cause a notice of probation revocation hearing to be completed. The probation revocation hearing shall be held in the county of probationer's residence; in the county where alleged probation violations occurred; in the same judicial district as that in which the alleged probation violator had the initial appearance, or in the county from which the warrant for the arrest of the alleged probation violator was issued.

**12.7(1) *Probation revocation hearing notice.*** The probation officer or board's designated officer shall cause to be prepared a written notice to the probationer of the date, time, and place of the probation revocation hearing which shall:

a. Include a complete copy of the report of violations including all documents referred to therein except confidential material defined in subrule 6.4(2).

b. Be served upon the probationer by personal service. The notice may be served by any person 18 years of age or older at least seven days prior to the probation revocation hearing unless the probationer waives the right to seven days' advance notice.

c. Inform the probationer of the purpose of the hearing; the violations of probation condition(s) alleged; the circumstances of the alleged violations; the possible action which may be taken as a result of the revocation proceedings; and the following rights to which the probationer shall be entitled at the probation revocation hearing. The right to:

(1) Appear and speak in their own behalf and to be aided by an interpreter if aid is determined to be necessary by the administrative parole and probation judge.

(2) Representation by an attorney or, if the probationer is indigent, the right to representation by an attorney pursuant to rule 26 of the Iowa Rules of Criminal Procedure.

(3) Remain silent.

(4) Present witnesses to testify in the probationer's behalf as to matters relevant to the alleged violation of probation.

(5) Confront and cross-examine adverse witnesses unless the administrative parole and probation judge determines that such witnesses would be subjected to risk of harm.

(6) Present documentary evidence and any relevant material or information.

**12.7(2) *Testimony at probation revocation hearing.*** All testimony shall be under oath.

**12.7(3) *Probation revocation hearing recorded.*** Probation revocation hearings shall be mechanically recorded. The recording or transcription thereof shall be filed and maintained by the board of parole for at least five years from the date of the probation revocation hearing. The probation revocation hearing may be videotaped if deemed appropriate by parole and probation judges.

**12.7(4) *Witnesses segregated.*** The administrative parole and probation judge on the judge's own motion or on the request of the probationer, probationer's counsel, or any representative of the state may order witnesses be segregated except that the probation officer, probationer, and counsel may be present at all times at the hearing.

**12.7(5) *Probation revocation hearing evidence.*** The admissibility of evidence at probation revocation proceedings is governed by Iowa Code section 17A.14.

*a. Documentary evidence.* The probation officer shall ensure all relevant documentary evidence is available at the hearing and has been made available to the probationer and the probationer's attorney prior to the hearing unless designated confidential. This evidence includes the violation report and statements of witnesses. When relevant documentary evidence is not available, the probation officer shall specify what evidence is unavailable and why.

*b. Physical evidence.* Physical evidence is ordinarily not required at the hearing. The probation officer may bring physical evidence to the hearing if the probationer has requested it or it appears necessary for the hearing, security is not endangered and there are no other means of presenting the information.

**12.7(6) Witnesses.**

*a. Probationer request.* A probationer may request either friendly or adverse witnesses. If a witness is requested by the probationer or the probationer's attorney, the probationer or the probationer's attorney shall notify the probation officer.

*b. Probation officer request.* If, in preparing the case prior to the hearing, the probation officer requires a particular witness to demonstrate essential facts of violation, attendance of that witness may be requested by the officer even though the probationer has not requested that witness. If a witness is requested by the probation officer, the officer shall notify the probationer or the probationer's attorney.

*c. Witnesses' transportation.* All witnesses shall provide their own transportation.

*d. Fearful witnesses.* All witnesses who refuse to attend the hearing either because they would be subjected to risk of harm if their identities were disclosed or who even if their identities were known, fear for their safety, should they attend the hearing, shall be interviewed by the probation officer prior to the hearing, their information documented in writing or on tape, the reasons for their fear should also be documented, and the administrative parole and probation judge shall determine whether good cause exists to excuse the witness's attendance and shall document the decision including the reasons.

*e. Interviewing witnesses.* A probationer or the probationer's attorney has the right to speak to possible witnesses, but it is completely within the discretion of an individual witness whether to speak to or disclose the witness's whereabouts to a probationer or the probationer's attorney. No attempt should be made by the parole board staff to influence the witness's decision.

**12.7(7) Subpoenas—general.** Subpoenas may be issued to require the attendance of witnesses or the production of documents at probation revocation hearings.

*a. Who may request.* The probationer, the probationer's attorney, probation officer, and board staff may request that a subpoena be issued.

*b. To whom made.* Requests shall be made directly to the administrative parole and probation judge or the board's designated officer as appropriate.

*c. When made.* The request shall be made prior to the scheduled hearing.

*d. Subpoena duces tecum.* The request for a subpoena duces tecum shall be accompanied by a declaration in support of the request. The declaration must show good cause for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and materiality of that evidence to the hearing, and that the requested witness has possession or control of the documentary evidence.

*e.* The board of parole shall not be required to pay subpoena service fees, witness fees, or witness transportation expenses.

**12.7(8) Continuances.**

*a.* A hearing may be continued by the presiding administrative parole and probation judge for good cause shown, either upon the presiding judge's own motion or upon the request of a party. A party's request for continuance shall be made in writing prior to the hearing, to the board business office. Each party shall be granted only one continuance except that in the case of extreme emergency, determined by the presiding administrative parole and probation judge, further continuance may be granted.

b. If, because of an emergency or other good cause, a party having received timely notice is unable to attend the hearing or request continuance within the allotted time, the presiding administrative parole and probation judge may continue the hearing and schedule another hearing with notice to all interested parties.

c. A notice of continuance may be served upon the probationer's attorney of record for the probation revocation proceeding in lieu of personal service upon the probationer.

d. If a notice of continuance does not involve any new allegations of probation violation, it need not be served upon the probationer or the probationer's attorney of record at least seven days prior to the hearing date. However, if the notice of continuance includes allegations of violations beyond those contained in the original notice of hearing, it must be served upon the probationer or the probationer's attorney of record at least seven days prior to the hearing date.

**12.7(9) Areas of responsibility.** The following areas of responsibility will apply for probation revocation hearings.

a. The probation officer will be responsible for the following:

(1) Coordinating and scheduling location, security, and control of the probation revocation hearing in a courtroom unless good cause is established prior to the hearing;

(2) Preparing notice of hearing forms and causing the notices to be served;

(3) Serving a written notice of probation revocation hearing on the county attorney or the county attorney's designee at least five days prior to the hearing date;

(4) Notifying probationer's attorney of record of hearing date, time, and place;

(5) Notifying all necessary state witnesses of the hearing date, time, and place;

(6) Processing any required subpoenas on behalf of the state;

(7) Ensuring all relevant state documents, forms, and materials are available at the hearing;

(8) Attending the hearing;

(9) Arranging security for posthearing transfer of the probationer in the event incarceration is ordered;

(10) Forwarding a summary of probation hearing to the county attorney, or the county attorney's designee as soon as reasonably possible following the probation revocation hearing.

b. The administrative parole and probation judge shall be responsible for the following:

(1) Maintaining records on all hearings in the fields;

(2) Advising the business office regarding progress of each case;

(3) Forwarding to the business office all materials and forms when hearings are completed.

**12.7(10) Probation revocation hearing—adjudication.**

a. At the conclusion of the adjudication stage of the hearing, the administrative parole and probation judge shall determine whether the probationer has violated the conditions of probation and shall verbally advise the probationer of the decision.

b. If the administrative parole and probation judge determines that the probationer has not violated the conditions of probation, the judge shall order that the probationer be released from custody and continued on probation.

c. If the administrative parole and probation judge finds that the probationer has violated a condition or conditions of probation, the judge shall make one of the following dispositions at the probation revocation hearing or any disposition allowed by Iowa Code section 908.11:

(1) Revocation of the probation.

(2) Revocation of the probation with the probationer placed on work release.

(3) Reinstatement of the probation with the previous probation conditions.

(4) Reinstatement of the probation with a modification of the probation conditions.

(5) Continuation of the dispositional portion of the hearing.

d. The administrative parole and probation judge shall determine from the record established at the final revocation hearing the date(s) of violation of probation. The judge shall also determine the number of days of probation which shall not be counted toward the discharge of the probationer's sentence.

**12.7(11) Probation revocation—hearing summary.** The administrative parole and probation judge or the board's designated officer, shall forward a summary of probation revocation hearing to the probationer, probationer's attorney, the probation officer, and the board office as soon as reasonably possible following the probation revocation hearing. The summary of the probation revocation shall consist of a summary of the proceeding and shall contain the judge's findings of fact, conclusions of law and disposition of the matter.

**12.7(12) Probation revocation hearing—conduct of the media.** The rules governing the conduct of the media at parole interviews as set out in 205—subrule 8.14(4) shall also apply to probation revocation hearings, except that decisions committed to the discretion of the board or board panel in that rule shall be made by the presiding administrative parole and probation judge.

**205—12.8(908) Appeal or review.** The order of the administrative parole and probation judge shall become the final decision of the board of parole unless, within ten days of the date of the decision, the probation violator appeals the decision or a panel of the board reviews the decision on its own motion. On appeal or review of the judge's decision, the board panel has all the power which it would have in initially making the revocation hearing decision. The appeal or review shall be conducted pursuant to rules adopted by the board of parole. The record on appeal or review shall be the record made at the probation revocation hearing conducted by the administrative parole and probation judge. Appeals must be received at the parole office or be postmarked by the applicable date or they will not be considered.

**205—12.9(908) Interstate compact probable cause hearings.** The Iowa board of parole may conduct interstate compact probation probable cause hearings under the same procedures as the Iowa probation revocation hearings.

**12.9(1) Interstate compact probable cause hearings.** The Iowa board of parole, or an administrative parole and probation judge, may conduct a probable cause hearing for a probationer from another state who is on probation in Iowa, under the terms of the interstate compact, according to the same procedures which govern probation revocation hearings for Iowa probationers who are on probation in Iowa.

**12.9(2) Interstate compact probation revocation hearings.** If an Iowa probationer was on probation outside the state of Iowa through the interstate compact, and has been returned to Iowa following a finding of probable cause in the receiving state, a probation revocation hearing shall be conducted for the probationer at the Iowa institution at which the probationer is incarcerated. This hearing shall be conducted according to the same procedures as those specified for hearings conducted for Iowa probationers who are on probation in the state of Iowa.

**205—12.10** Reserved.

**205—12.11(908) Waivers.** When the probation officer makes a recommendation to the board of parole for revocation of probation, the probation officer shall inform the probationer of the probationer's rights and afford the probationer the opportunity to execute a waiver of probation revocation hearing. The probation officer should also inform the probationer of the opportunity to waive the probationer's right to personal appearance and consent to the probation revocation hearing being conducted over the telephone.

**12.11(1) *Waiver of probation revocation hearing.*** A waiver of probation revocation hearing shall constitute an admission of the alleged violation(s) and shall include a waiver of any right to a personal appearance before the administrative parole and probation judge to contest the violations.

**12.11(2) *Probation revocation hearing waiver procedures.*** If the probationer desires to execute a waiver of probation revocation hearing, the waiver shall be entered on the appropriate form provided by the board which shall be signed by the probationer in the presence of the administrative parole and probation judge or the probation officer/supervisor if conducted electronically. The administrative parole and probation judge shall make a verbatim record of the waiver proceeding and shall address the probationer personally and inform the probationer of and determine that the probationer understands the contents of the waiver form which shall include:

- a.* The nature of the probation violation to which the waiver is addressed;
  - b.* The legal rights of the probationer;
  - c.* The fact that the execution of the waiver constitutes an admission of the alleged violation(s);
  - d.* The fact that the probationer may be committed to the custody of the Iowa department of corrections without further proceedings.
- (1) A waiver is complete and final upon execution.
  - (2) A waiver may be appealed according to the parole board's probation revocation appeal process in rule 205—12.8(908).

**12.11(3) *Waiver of the right to personal appearance.*** In the event the probationer executes a waiver of the right to personal appearance and consent to probation revocation hearing to be conducted over the telephone, the probation revocation hearing should be scheduled and conducted as a routine probation revocation hearing with the exception that it shall be conducted electronically.

**205—12.12(908) Conviction of a felony while on probation.** Reserved.

**205—12.13(908) Conviction of an aggravated misdemeanor while on probation.** Reserved.

**205—12.14(908) Electronic means.** The administrative parole and probation judges may use facsimile machines, telephones, two-way interactive video or other electronic means to conduct any or all of the probation revocation proceedings and probation revocation hearings. An electronically produced document shall have the same force and effect as an original document.

These rules are intended to implement Iowa Code chapters 906 and 908.

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